

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KARL WINGO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Criminal Case No. 91-80936

Civil Case No. 04-71558

Honorable Patrick J. Duggan

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on June 7, 2010.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

In 2004, Petitioner Karl Wingo (“Petitioner”) filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. This Court denied Petitioner’s motion *in toto* on August 29, 2007. The Sixth Circuit Court of Appeals affirmed this Court’s decision on August 11, 2009. Petitioner thereafter filed in this Court a Motion to Compel Answer to Motion for Resentencing and to Amend Pursuant to Federal Rule of Civil Procedure 15(a), which this Court denied in an opinion and order filed January 27, 2010. Petitioner filed motions for reconsideration and for relief from judgment, which the Court denied on March 22 and April 15, 2010, respectively. Petitioner filed a notice of appeal with respect to the Court’s decisions on April 26, 2010. He therefore filed a motion on

the same date, seeking a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the Supreme Court has stated:

“... the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.”

Barefoot v. Estelle, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4 (1983) (quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D. Ga. 1980))(emphasis added and internal citation and quotation marks omitted). As the Supreme Court more recently stated, “[w]here a district court has rejected the constitutional claim on the merits, the showing required to satisfy 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

This Court continues to believe that Petitioner is not entitled to resentencing for the reasons set forth in its previous decisions. The Court further believes that this conclusion is not “debatable among jurists of reason.”

Accordingly,

IT IS ORDERED, that Petitioner's Motion for Certificate of Appealability (Doc.

1187) is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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